

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

NATIONAL GENERAL INSURANCE
COMPANY,

Plaintiff,

v.

MICHAEL W. ROBERTSON, *et al.*,

Defendants.

Case No. 2:14-cv-01845-LDG (PAL)

ORDER

The plaintiff, National General Insurance Company (National), filed a complaint seeking a declaration that it does not owe a duty to defend or indemnify:

a) defendants American Motorcycle Association (AMA), Run for the Wall (RFTW), and American Insurance Company (ACE), in a lawsuit brought against those defendants by a third party; and

b) defendant Michael W. Robertson for claims arising from the breach of a Release and Waiver of Liability, Assumption of Risk and Indemnity Agreement between Roberts and AMA, RFTW, and ACE.

Robertson moves to dismiss (# 6) National's complaint as against him pursuant to Fed. R. Civ. Proc. 12(b)(1) for lack of subject matter jurisdiction, and pursuant to Rule

1 12(b)(6) for failure to state a claim. National opposes the motion (#14), and Robertson has
2 filed a reply (#16). Having read and considered the pleadings and papers, the Court will
3 deny the motion.

4 Motion to Dismiss for Lack of Subject Matter Jurisdiction

5 Pursuant to 28 U.S.C. §1332(a), this Court has subject matter jurisdiction over suits
6 in which the parties are citizens of different states, and the amount in controversy exceeds
7 \$75,000. Generally, the amount in controversy is determined from the face of the
8 pleadings. See *Pachinger v. MGM Grand Hotel - Las Vegas, Inc.*, 802 F.2d 362, 363 (9th
9 Cir. 1986). “In actions seeking declaratory or injunctive relief, it is well established that the
10 amount in controversy is measured by the value of the object of the litigation.” *Hunt v.*
11 *Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 347 (1977). “To justify dismissal, ‘it
12 must appear to a legal certainty that the claim is really for less than the jurisdictional
13 amount.’” *Budget Rent-A-Car, Inc. v. Higashiguchi*, 109 F.3d 1471, 1473 (quoting *St. Paul*
14 *Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938)). The Court may consider
15 the maximum amount of coverage under an insurance policy for purposes of determining
16 whether the amount in controversy satisfies the jurisdictional requirement. *Id.* For
17 jurisdictional purposes, the amount at stake in the underlying litigation establishes the
18 amount in controversy for purposes of diversity jurisdiction. *Theis Research, Inc. v. Brown*
19 *& Bain*, 400 F.3d 659, 662 (9th Cir. 2005).

20 In his moving papers, Robertson argues that the amount in controversy does not
21 exceed \$75,000 because National concedes in its complaint that it is not seeking monetary
22 damages. The argument is without merit, as National is seeking declaratory relief against
23 Robertson. As such, the amount in controversy is measured by the value of the underlying
24 litigation. National has shown that the value of the underlying litigation exceeds \$75,000.
25 Robertson has not argued or shown otherwise. Accordingly, this Court has subject matter
26 jurisdiction over the claim brought against Robertson.

1 Motion to Dismiss for Failure to State a Claim.

2 The defendant's motion to dismiss, brought pursuant to Fed. R. Civ. P. 12(b)(6),
3 challenges whether the plaintiff's complaint states "a claim upon which relief can be
4 granted." In ruling upon this motion, the court is governed by the relaxed requirement of
5 Rule 8(a)(2) that the complaint need contain only "a short and plain statement of the claim
6 showing that the pleader is entitled to relief." As summarized by the Supreme Court, a
7 plaintiff must allege sufficient factual matter, accepted as true, "to state a claim to relief that
8 is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).
9 Nevertheless, while a complaint "does not need detailed factual allegations, a plaintiff's
10 obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels
11 and conclusions, and a formulaic recitation of the elements of a cause of action will not do."
12 *Id.* at 555 (citations omitted). In deciding whether the factual allegations state a claim, the
13 court accepts those allegations as true, as "Rule 12(b)(6) does not countenance . . .
14 dismissals based on a judge's disbelief of a complaint's factual allegations." *Neitzke v.*
15 *Williams*, 490 U.S. 319, 327 (1989). Further, the court "construe[s] the pleadings in the
16 light most favorable to the nonmoving party." *Outdoor Media Group, Inc. v. City of*
17 *Beaumont*, 506 F.3d 895, 900 (9th Cir. 2007).

18 However, bare, conclusory allegations, including legal allegations couched as
19 factual, are not entitled to be assumed to be true. *Twombly*, 550 U.S. at 555. "[T]he tenet
20 that a court must accept as true all of the allegations contained in a complaint is
21 inapplicable to legal conclusions." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "While
22 legal conclusions can provide the framework of a complaint, they must be supported by
23 factual allegations." *Id.* at 679. Thus, this court considers the conclusory statements in a
24 complaint pursuant to their factual context.

25 To be plausible on its face, a claim must be more than merely possible or
26 conceivable. "[W]here the well-pleaded facts do not permit the court to infer more than the

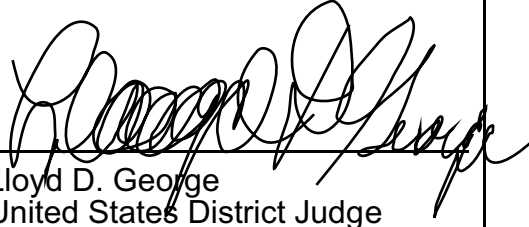
1 mere possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—‘that the
2 pleader is entitled to relief.’ *Id.* (citing Fed. R. Civ. P. 8(a)(2)). Rather, the factual
3 allegations must push the claim “across the line from conceivable to plausible.” *Twombly*,
4 550 U.S. at 570. Thus, allegations that are consistent with a claim, but that are more likely
5 explained by lawful behavior, do not plausibly establish a claim. *Id.* at 567.

6 Robertson argues that National seeks a declaration that it has no duty to defend or
7 indemnify Robertson in an action brought in California by third parties injured in an accident
8 in which Robertson was involved. The argument is without merit as it is contrary to the
9 plain allegations of the complaint. In the present suit, National seeks only a declaration
10 that it has no duty to defend or indemnify Robertson “for any claims for or, [sic] arising out
11 of, breach of the Release and Waiver of Liability, Assumption of Risk and Indemnity
12 Agreement,” Complaint, p.4, ll.26-27, that Robertson signed in favor of AMA and RFTW.
13 Robertson has not identified any allegation within the complaint suggesting that the third
14 parties that brought the California action against him have alleged claims arising from the
15 breach of the Release and Waiver of Liability agreement.

16 Accordingly, for good cause shown,

17 THE COURT **ORDERS** that Defendant Michael Robertson’s Motion to Dismiss (#6)
18 is DENIED.

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20 DATED this 30 day of September, 2015.

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22 
23 Lloyd D. George
24 United States District Judge
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